

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

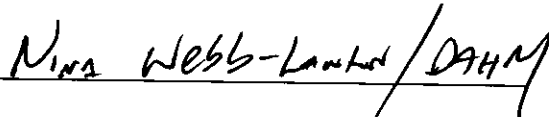
IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL NO. 1456
LITIGATION)	
)	ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)	
<i>Rice v. Abbott Laboratories, Inc.</i> ,)	JUDGE PATTI B. SARIS
No. 3:02-cv-03925, (N.D. Cal.);)	
<i>Thompson v. Abbott Laboratories, Inc.</i> ,)	
No. 3:02-cv-04450 (N.D. Cal.);)	
<i>Turner v. Abbott Laboratories</i> ,)	
No. 3:02-cv-5006 (N.D. Cal.))	

DEFENDANT ROXANE LABORATORIES, INC. MOTION TO DISMISS

Defendant Roxane Laboratories, Inc. ("Roxane"), through undersigned counsel, respectfully moves this Court to dismiss Roxane from the above-captioned litigation under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

A memorandum in support is attached.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Defendant Roxane Laboratories, through undersigned counsel, respectfully moves to be dismissed from both the Amended Master Consolidated Complaint (“AMCC”) and the individual California complaints. Roxane adopts and incorporates by reference the arguments set forth in the consolidated Motion to Dismiss the Unnamed Defendants, as modified by this Memorandum in Support.

Pursuant to this Court’s Case Management Order 2, all subsequent suits transferred to this Court were considered to have amended the Master Consolidated Complaint. See Case Management Order 2, at 1. This Court’s Memorandum and Order of May 13, 2003 held that pursuant to Fed. R. Civ. P. 8 & 9 any amendment to the Master Consolidated Complaint must “clearly and concisely allege with respect to each defendant: (1) the specific drug or drugs that were purchased from defendant, (2) the allegedly fraudulent AWP for each drug, and (3) the name of the specific plaintiff(s) that purchased the drug.” Memorandum and Order, at 44-45.

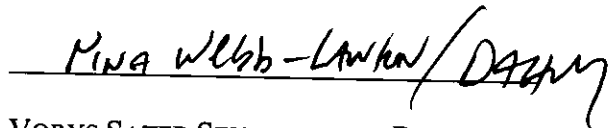
Plaintiffs in the above-captioned actions have failed to meet this threshold pleading requirement. Though Roxane is mentioned in passing as a member of the “Boehringer Group” in a chart on page 91 of the AMCC, Roxane is clearly omitted as a defendant (a) from the caption of the AMCC; (b) from the list of named defendants on pages 18-19 of the AMCC; (c) from the list of defendants in Appendix B to the AMCC; and (d) from the list of allegedly fraudulent average wholesale prices (AWPs) in Appendix A to the AMCC.¹

¹ In addition to Plaintiffs’ failure to conform to this Court’s Orders pursuant to Rule 8 & 9(b), the Plaintiffs have also failed to conform the AMCC to Fed. R. Civ. P. 10(a). Rule 10(a) requires that the names of all the parties be included in the caption. In *Thompson v. Kramer*, Civ. A. No. 93-2290, 1994 WL 702927 (E.D. Penn. Dec. 13, 1994), the Eastern District of Pennsylvania dismissed a party from action where the party was not named as a defendant in the caption and it was unclear from body of complaint whether the party was supposed to be a named defendant. *Id.* at *12. *Kramer* is clearly applicable to the present case.

Furthermore, Roxane is not identified by name in Appendix B as a manufacturer of any drug, nor is any Plaintiff identified as having purchased any drug from Roxane, as required by this Court's Orders. *See* AMCC App. B. Finally, Roxane is not named as a defendant in any of the allegations of the AMCC attributed to other members of the "Boehringer Group." *See* AMCC at 92-96; 217; 247-48.

Because neither the AMCC, nor the California complaints, comply with this Court's pleading requirements in its Case Management Order 2 and the Memorandum and Order, Roxane respectfully requests it be dismissed from the AMCC and the California complaints.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served via

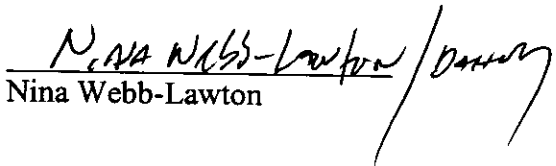
Verilaw on all enrolled counsel on July 18, 2003.

I also certify, that true and correct copies of the foregoing were served on July 18, 2003, by regular U.S. mail to the following plaintiffs' counsel at the below listed mailing addresses:

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